D.B. CIVIL SPECIAL APPEAL (W) NO.492/2007
The State of Rajasthan & Anr. Vs. Jitendra Kumar & Anr.

Date : 12.04.2007

PRESENTS

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. K.L. Thakur, Addl. Advocate General.
Mr. Sanjeet Purohit for the respondent.

We have heard learned counsel for the parties on appeal also.

The respondent workman has challenged the award of Labour Court dated 1st September, 1998 holding his retrenchment to be invalid and by way of relief a lump sum Rs.15,000/- as compensation has been awarded and reinstatement has not been awarded.

The learned Single Judge has allowed writ petition by directing that workman be reinstated by treating him continuous in employment. He further directed that the amount of compensation paid to the workman be adjusted agaisnt his back wages which was required to be paid in terms of the directions issued. Hence, this appeal by the State.

The facts of the case are that the petitioner was appointed as a casual worker in September 1984 and he worked upto April 1985. Thereafter he was again employed on 1st July, 1985 and continued to work upto 30th April, 1986 but his services were terminated orally w.e.f. 1.5.1986. In other words, according to the petitioner, he worked about 7 months in first spell which did not give him any right to protection under Industrial Disputes Act against the retrenchment. And thereafter in second spell of employment, which followed about 3 months after 1st spell of employment, he worked for 9 months. The termination took effect in 1.5.1986.

The petitioner challenged in the first instance his termination order in 1988 by way of writ petition which came to be dismissed inter alia on the ground that the petitioner should avail the alternative remedy by raising industrtial dispute. This led to raising of industrial dispute and reference to the Labour Court, Apparently, while reinternchment has been found to be invalid, the labour court has considered, apart from the distance of time between the termination of service and reference of the dispute to the Industrial Tribunal as well as the distance of time between the date of termination of services and the consideration of grant of

relief, the merger of total period of service rendered and the casual nature of employment and considered the compensation in lieu of reinstatement to be appropriate relief. A sum of Rs.15,000/- was awarded as compensation.

We are of the opinion that devising the relief in case the retrenchment is found contrary to provisions of Industrial Disputes Act is primarily the domain of the labour work and unless there is a fundamental error in consideration of the relevant factors in modulating the relief, the Court should be slow to interfere in the relief. It is now well settled that reinstatement in the case of illegal retrenchment is not as a matter of course and in various circumstances some of which are nature of employment which the workman held immediately before termination, the total period of service rendered by the workman before terminating the serivce, the distance of time between termination and consideration of relief, the time taken in raising the dispute. These are only some of the relevant factors. If on consideration of various factors, the reinstatement is not found to be right remedy, it ought not to be interfered by the Court.

In the present case, indisputably the workman was employed only as a daily wager and casual labour and that too for

a very short periods on 2 spells between 1984 and 1986. The total period of service rendered by the workman is not more than 15 months. More than 20 years have already elapsed when the petition came to be decided by the leanred Single Judge. The leanred Labour Court had considered all the relevant aspects of the matter and has thought it fit to award compensation in lieu of reinstatement and considered it not to be fit case for reinstatement, which in our opinion, was rightly so.

Therefore, the modification of award from the compensation in lieu of reinstatement with reinstatement with full back wages was not justified. However, we also are of the opinion that considering the distance of time, the amount of compensation awarded by the labour court is too meager. While we agree with the submission of the learned counsel for the appellant that it was not a case for reinstatement, we are unable to agree with that it is not a case of illegal retrenchment. Considering it to be a case of illegal retrenchment and considering other aspects of the matter, we deem it just to award Rs.30,000/- to the workman in lieu of reinstatement by way of compensation for illegal retrenchment.

No order as to costs.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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D.B. CIVIL SPECIAL APPEAL (W) NO.DR(J)2926/06
The State of Rajasthan & Anr. Vs. Jitendra Kumar & Anr.

Date : 12.04.2007

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. K.L. Thakur, Addl. Advocate General.
Mr. Sanjeet Purohit for the respondent.

Having heard learned counsel for the parties on the application under Section 5 of the Limitation Act we are satisfied that the appellant was prevented by sufficient cause from filing this appeal within limitation. The delay in filing the appeal is condoned. The application under Section 5 of Limitation Act is allowed. The appeal may now be registered.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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